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2  
3 BILL NO. S-78-05-33

4 SPECIAL ORDINANCE NO. S-

5 AN ORDINANCE approving an Agreement with  
6 Ben Bunt Realty, Inc., for construction  
7 of a sanitary sewer.

8 NOW THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF  
9 FORT WAYNE, INDIANA:

10 SECTION 1. That the Agreement dated May 3, 1978, between the  
11 City of Fort Wayne, by and through its Mayor and the Board of Public Works  
12 and Ben Bunt Realty, Inc., for:

13 SANITARY SEWER

14 MAIN #1: Beginning at a proposed sanitary sewer manhole  
15 located 80+ LF East of west R/W line of Maple-  
16 crest Road and 30+ LF South of the centerline  
17 of Millhollow Lane; thence westerly generally  
following the south R/W line of Millhollow  
Lane 1300+ LF terminating at a proposed clean-

18 LATERAL #1: Beginning at a proposed sanitary sewer man-  
19 hole located 30+ LF south of Millhollow Lane  
20 and 30+ LF west of east Property line of Lot  
21 #2 of the Hollows, Section I; thence due  
north 340+ LF terminating at a proposed man-  
hole located 5+ LF south of and 5+ LF west of  
southwest corner lot #62 of the Hollows,  
Section I.

22 LATERAL #2: Beginning at a proposed sanitary sewer man-  
23 hole located 25+ LF east of and 30+ LF south  
24 of the centerline intersection of Old Willow  
Place and Millhollow Lane; thence north 525+  
25 LF terminating at a proposed manhole located  
26 20+ LF east of the centerline of Old Willow  
Place and 5+ LF south of the southeast corner  
of Lot #43 of the Hollows, Section I.

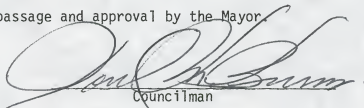
27 LATERAL #3: Beginning at a proposed manhole located  
28 30+ LF south of the center line intersection  
of Old Willow Place and Millhollow Lane;  
29 thence due north 515+ LF terminating at a  
proposed cleanout located 20+ LF east of the  
30 centerline of Arch Tree Place and 5+ LF  
south of the southeast corner of Lot #27 of  
the Hollows, Section I.

31 Said sewer shall be 8" in diameter.

32  
33 of which the developer shall pay the entire cost and expense of the con-  
34 struction of said sewer, all as more particularly set forth in said agree-  
35 ment which is on file in the Office of the Board of Public Works and is

1 by reference incorporated herein, made a part hereof and is hereby in all  
2 things ratified, confirmed and approved.

3 SECTION 2. That this Ordinance shall be in full force and effect  
4 from and after its passage and approval by the Mayor.

5   
6 Councilman

34 APPROVED AS TO FORM  
35 AND LEGALITY,

  
CITY ATTORNEY

Read the first time in full and on motion by Burns, seconded by

Hinga, and duly adopted, read the second time by title and referred to the Committee on City Matters (and the City-Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

DATE: 5-23-78

Charles W. Westerman  
CITY CLERK

Read the third time in full and on motion by Burns,

seconded by Stier, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>8</u>	_____	_____	<u>1</u>	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>HINGA</u>	<u>✓</u>	_____	_____	_____	_____
<u>HUNTER</u>	<u>✓</u>	_____	_____	_____	_____
<u>MOSES</u>	<u>✓</u>	_____	_____	_____	_____
<u>NUCKOLS</u>	_____	_____	_____	<u>✓</u>	_____
<u>SCHMIDT, D.</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT, V.</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 6-13-78

Charles W. Westerman  
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

(ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE

(RESOLUTION), No. S-86-78 on the 13<sup>th</sup> day of June, 1978.

ATTEST: (SEAL)

Charles W. Westerman  
CITY CLERK

Samuel J. Talarico  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14<sup>th</sup> day of June, 1978, at the hour of 11:00 o'clock A. M., E.S.T.

Charles W. Westerman  
CITY CLERK

Approved and signed by me this 20<sup>th</sup> day of June, 1978, at the hour of 1:30 o'clock A. M., E.S.T.

Robert Armstrong  
MAYOR

Bill No. S-78-05-33

REPORT OF THE COMMITTEE ON CITY UTILITIES

We, your Committee on City Utilities to whom was referred an Ordinance  
approving an Agreement with Ben Bunt Realty, Inc., for construction  
of a sanitary sewer

have had said Ordinance under consideration and beg leave to report back to the Common  
Council that said Ordinance 20 PASS.

PAUL M. BURNS - CHAIRMAN

JAMES S. STIER - VICE CHAIRMAN

VIVIAN G. SCHMIDT

WINFIELD C. MOSES, JR.

FREDRICK R. HUNTER

*Paul M. Burns*

*James S. Stier*  
*Vivian G. Schmidt*  
*Winfield C. Moses, Jr.*  
*Fredrick R. Hunter*

6-13-78 CONCURRED IN  
DATE            CHARLES W. WESTERMAN, CITY CLERK

5/3/78

65-315-13

AGREEMENT FOR SEWER EXTENSION

THIS AGREEMENT, made in triplicate this 3rd day of May, 1978, by and between BEN BUNT REALTY, INC., hereinafter referred to as "Developer", and the CITY OF FORT WAYNE, INDIANA, an Indiana Municipal Corporation, hereinafter referred to as "City",

WITNESSETH:

WHEREIN, the Developer desires to construct the following described sanitary sewer for The Hollows, Section I, more particularly described as follows:

MAIN #1: Beginning at a proposed sanitary sewer manhole located 80+ LF East of west R/W line of Maplecrest Road and 30+ LF south of the centerline of Millhollow Lane; thence westerly generally following the south R/W line of Millhollow Lane 1300+ LF terminating at a proposed cleanout.

LATERAL #1: Beginning at a proposed sanitary sewer manhole located 30+ LF south of Millhollow Lane and 30+ LF west of east Property line of Lot #2 of The Hollows, Section I; thence due north 340+ LF terminating at a proposed manhole located 5+ LF south of and 5+ LF west of southwest corner lot #62 of The Hollows, Section I.

LATERAL #2: Beginning at a proposed sanitary sewer manhole located 25+ LF east of and 30+ LF south of the centerline intersection of Old Willow Place and Millhollow Lane; thence north 525+ LF terminating at a proposed manhole located 20+ LF east of the centerline of Old Willow Place and 5+ LF south of the southeast corner of Lot #43 of The Hollows, Section I.

LATERAL #3: Beginning at a proposed manhole located 30+ LF east of and 30+ LF south of the center line intersection of Old Willow Place and Millhollow Lane; thence due north 515+ LF terminating at a proposed cleanout located 20+ LF east of the centerline of Arch Tree Place and 5+ LF south of the southeast corner of Lot #27 of The Hollows, Section I.

Said sewer shall be 8" in diameter.

All aforescribed Laterals shall be 8" in diameter, and constructed in accordance with plans, specifications and profiles heretofore submitted to the City and now on file in the office of the Chief Engineer of the Water Pollution Control Utilities of the City, and known as The Hollows, Section I, which plans, specifications and profiles are by reference incorporated herein and made a part thereof. NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. CONSTRUCTION OF SEWER:

The Developer shall cause said sewer to be constructed and located in accordance with said plans, specifications, and profiles, all approved by the City, under private contract after requisite City approval. All work and materials shall be subject to inspection by City and the right of City to halt construction if there shall be non-compliance therewith. Said sewer shall not be deemed permanently connected into the sewer system of City until final acceptance by City. Upon completion, said sewer shall become the property of City and City shall accept sewage therefrom, subject to such monthly sewage service charges as may now or hereafter be regularly established by City and all further maintenance thereafter shall be borne by City.

2. COST OF CONSTRUCTION:

The Developer agrees to pay the entire cost and expense of construction of said sewer, in cash, including City inspection fees, and to hold the City harmless from any liability for claims connected therewith.

3. AREA OF DEVELOPER:

Said sewer when accepted by the City will serve The Hollows, Section I, subject to park areas to be deeded to The Hollows Community Association, Inc., said parks noted in The Hollows, Section I, as Block A and containing 2.57 acres more or less. Also, subject to the Road right-of-way containing 3.5 acres more or less.

Therefore, the amount of assessable area to developer for the described real estate contains 15.46 acres.

As the Developer will pay for the cost of construction of said sewer as it pertains to the above described area, no charge or assessment is made by this Agreement against the above described real estate for the construction of said sewer by the present or future owners of said real estate except only as to such standard tap-in inspection fees and monthly sewage treatment charges as are customarily charged by the City for connections to City Sewer mains and treatment of sewage therefrom. An area connection charge of \$300.00 per acre must be paid to City at the time of connection. This area connection charge is in addition to the local charge as set forth above, and represents the oversizing cost expended by City for sewer line pertaining to Pierson Ditch Interceptor - Resolution No. 145-1964 and Resolution No. 146-1964, adopted by resolution of the Board of Works on September 14, 1964.

4. BOND:

The Developer shall furnish a satisfactory Maintenance Bond for 25% of the value of the sewer which shall guarantee said sewers against defects for a period of one (1) year from the date of final acceptance of said sewers by the City.

5. LIMITATION ON USE:

Said sewers shall be constructed for disposal of sanitary sewage only, and neither the parties hereto, their successors, or assigns, or any future owner of any land serviced by said sewer, shall at any time discharge or permit to be sidcharged or to flow into said sanitary sewer, any water runoff caused by natural precipitation or anything other than sanitary sewage or contaminated wastewater.

6. GOVERNING STATUTE:

It is the intention of the parties hereto to utilize and take advantage of and apply to this Agreement the provisions of Section 16, 17 and 18 of Chapter 128 of the Acts of 1967 of the State of Indiana (I.C. 19-2-7-16, I.C. 19-2-7-17, I.C. 19-2-7-18, the provisions of which Sections shall govern with respect to any matters not specifically outlined herein.

7. WAIVER OF RIGHT TO REMONSTRATE AGAINST ANNEXATION:

The Developer, for itself, its successors in title and assigns, waives and releases any and all rights which it may now or hereafter have to remonstrate against or otherwise object to, interfere with, or oppose any pending or future annexation by City of any territory now or hereafter owned by him, as described in Article 3 herein, or hereafter served by said sewer or any extension thereof. In further consideration and to induce City to execute and reify this Agreement, said Developer, for itself, its successors and assigns, agrees by this Agreement to vest in City the permanent right at its discretion to annex to the City of Fort Wayne at any future time by duly authorized ordinance the said real estate described in Article 3 herein.

Developer further agrees that any deeds, contracts, or other instruments of conveyance made by the Developer, its successors or assigns transferring or conveying any interest or title in and to any of the real estate described in Article 3 herein, shall contain the waiver and release provisions contained in this article, which provisions shall run with the land and the acceptance of the delivery of any such instrument from the Developer, his successors and assigns by any grantee, vendee, or contract purchaser, shall be made subject to the terms of this Agree-



ment and shall constitute an acceptance of the foregoing provisions by said grantee, vendee, or contract purchaser and their successors in title.

The Developer further agrees to record an executed copy of this Agreement in the Allen County Recorder's office within ten (10) days of its adoption and approval by the Common Council of City as herein-after provided. Any owner or owners of which are now, or hereafter located outside the corporate limits of City who connect into the sewer constructed hereunder shall be deemed to thereby waive his, her, their, or its right to remonstrate against or otherwise object to, interfere with, or oppose any pending or future annexation by City of such land or of the territory in which it is located or of the area served by said sewer.

8. COUNCILMANIC APPROVAL:

It is understood and agreed that this Agreement is in all respects subject to approval by the Common Council of City, by duly adopted ordinance, and if such ordinance is not adopted within a period of ninety (90) days after execution thereof, this Agreement shall be null and void and of no further force and effect.

IN WITNESS WHEREOF, the parties have subscribed to this Agreement the day and year first above written.

ATTEST:

By

Lucile C. Bunt  
Corporate Secretary  
Lucile C. Bunt

BEN BUNT REALTY, INC.

By

Benjamin E. Bunt  
Benjamin E. Bunt, President



STATE OF INDIANA)

) SS:

COUNTY OF ALLEN )

BEFORE ME, a Notary Public, in and for said County and State, this 20th day of March, 1978, personally appeared the within named Benjamin E. Bunt, President of Ben Bunt Realty, Inc. and as such are duly authorized to execute the foregoing instrument and acknowledged the same as their voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

My Commission Expires:

3-12-81

Carolyn S. Wyant  
Carolyn S. Wyant Notary Public  
Resident of Allen County, Indiana

CITY OF FORT WAYNE, INDIANA

By: Robert E. Armstrong  
Robert E. Armstrong, Mayor

BOARD OF PUBLIC WORKS

By: Henry P. Wehrenberg  
Henry P. Wehrenberg, Chairman

ATTEST:

Arcula Miller

By: Ethel H. LaMar  
Ethel H. LaMar, Member

By: Max G. Scott  
Max G. Scott, Member

STATE OF INDIANA)

) SS:

COUNTY OF ALLEN )

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, personally appeared Mayor Robert E. Armstrong, and Henry P. Wehrenberg, Chairman and Max G. Scott, Member, who acknowledged the execution of the foregoing Agreement for Sewer Extension, as and for their voluntary act and deed for the uses and purposes therein contained. IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

My Commission Expires:

3/6/80

Anne D. Fay  
Notary Public  
Resident of Allen County

Approved as to form and legality:

Philip R. Boller  
Assistant City Attorney

This Instrument prepared by Philip R. Boller, P.E.

4060  
TITLE OF ORDINANCE SPECIAL ORDINANCE - AGREEMENT FOR SEWER EXTENSION - THE HOLLOWS, SECTION I,  
BEN BUNT REALTY, INC.  
DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS L-78-05-33  
SYNOPSIS OF ORDINANCE AGREEMENT FOR SEWER EXTENSION - THE HOLLOWS, SECTION I - BEN BUNT REALTY,  
INC. FOR THE CONSTRUCTION OF SANITARY SEWERS TO SERVE THE HOLLOWS, SECTION I.

AGREEMENT FOR SEWER EXTENSION ATTACHED

EFFECT OF PASSAGE CONSTRUCTION OF SANITARY SEWERS FOR THE HOLLOWS, SEC. I

EFFECT OF NON-PASSAGE INABILITY TO PROCEED WITH CONSTRUCTION AS PLANNED

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) DEVELOPER AGREES TO PAY THE ENTIRE COST  
AND EXPENSE OF CONSTRUCTION OF SAID SEWER

ASSIGNED TO COMMITTEE \_\_\_\_\_

EP

*City Utilities  
D. H. Bunt*